BEST COPY AVAILABLE

DEPARTMENT OF STATE A/ODC/AR
REVIEWED BY Flaherty DATE 3/19/82
RDS
ENFORCE
DECLASSIFY
RELEASE EXCEPT
PA or DEA EXEMPTION

BACKGROUND MEMORANDUM

The Professions Clause in United States Treaties

Previous treatment

Treaty provisions which have been considered by the Department as reserving the requirement of citizenship for the practice of professions have been included in the treaties of the United States for nearly thirty years, beginning with the Treaty of Friendship, Commerce and Consular Rights signed with Germany in December 1923. These provisions, which are not very clear, read as follows in Article I of the treaty with Germany:

> "The nationals of each of the High Contracting Parties shall be permitted to... engage in professional, scientific, religious, philanthropic, manufacturing and commercial work of every kind without interference... and generally to do anything incidental to or necessary for the enjoyment of any of the foregoing privileges upon the same terms as nationals of the state of residence or as nationals of the nation hereafter to be most favored by it, submitting themselves to all local laws and regulations duly established."

Similar provisions are embodied in treaties concluded with Hungary (1925, terminated 1952); El Salvador (1926); Honduras (1927); Austria (1928), Norway (1928), and Liberia (1938). The treaty with Poland (1931, terminated 1952) excepts professions reserved to citizens by laws in force on June 15, 1931 and provides further for most-favored-nation treatment on condition of reciprocity. The treaty with Finland (1934) contains the reservation "insofar as may be permitted by local law," but supplements this with a most-favored-nation clause. In the treaty of 1937 with Siam the practice of professions is based solely on a most-favored-nation clause. The treaties with Estonia (1925), Latvia (1928), and China (1946) contain an exception for professions "reserved exclusively to nationals of the country," without specifying whether a profession can be considered exclusively reserved to citizens if open to other aliens by virtue of a treaty with any third country. The treaties signed with Italy (1948) and Ireland (1950) contain specific exceptions with respect to the practice of law. Both of those treaties contain most-favored-nation clauses but there is difference of opinion as to the application of the clause in the treaty with Italy. The treaty of 1949 with Uruguay, approved by the Senate in 1950, makes no exception to the general grant of national treatment with respect to the practice of professions.

No difficulty

No difficulty or criticism appears to have resulted from the inclusion in treaties of provisions like those quoted above from the treaty with Germany. It may be noted in this connection that treaty provisions removing the requirement of citizenship for persons engaging in commercial activities, including the sale of liquor, are observed by the States without question.

Treaties being drafted at the present time contain specific exceptions with respect to the practice of law.

Treaty with Israel

The objection by Senator Hickenlooper and ABA members arose when the treaty of friendship, commerce and navigation signed with Israel in August 1951 was submitted to the Senate in October 1951. That treaty contains in Article VII (2) provisions identical to those quoted above from the treaty with Japan. Undoubtedly a considerable amount of the opposition to the treaty with Israel arose from the erroneous impression of many, who, without having read the text, assumed that the provision on professions removes all local requirements as to qualifications, residence, etc. In May 1952 when officers of the Department discussed the provision with Senator Hickenlooper it was apparent that he was aware of the correct meaning of the professions article; that the provision removes only the requirement of citizenship, leaving all other requirements undisturbed. This did not overcome the Senator's opposition; nor was an arrangement to replace the provision in the Israel treaty by a most-favored-nation provision acceptable to the Senator.

It appeared that the compromise required for Senate subcommittee approval of the pending friendship, commerce and navigation treaties, within the time remaining in that session, was a reservation excluding all professions for which citizenship was required by State laws.

Pending treaties

Other treaties of friendship, commerce and navigation pending in the Senate at the time and which remain pending are as follows:

Country

Country	Date signed	Date submitted to Senate	
Colombia	April 1951	June 1951	Contains general professions clause but treaty may be withdrawn because of other provisions.
Ethiopia	Sept. 1951	Jan. 1952	Provision states only that nationals of the other country shall "be permitted to engage in the practice of professions for which they have qualified".
Denmark	Oct. 1951	Jan. 1952	Professions clause excepts professions which "because they involve the performance of functions in a public capacity or in the interest of public health and safety, are state-licensed and reserved by statute exclusively to citizens of the country."
Greece	Aug. 1951	Jan. 1952	Professions clause excepts the practice of law, dentistry, and pharmacy.

The wording of the new provision, it is that of the "treaty traders" clause, follows closely the language of the act. However, the term "solely", which precedes the definition of each category in the act, has been omitted, as it has not been employed in the "treaty trader" provisions of most treaties and its inclusion here might raise unnecessary questions. It would [redacted] be prudent, however, to indicate to the Japanese that Article II (1) will, of course be applied in full conformity with the language of the act.

Regulations to govern the issuance of this new class of visa have not yet been promulgated (the act does not go into final effect until six months after enactment); but presumably they will be comparable with those relating to the 3(6) visa.

(2) At the request of the marine underwriters and the United States Chamber of Commerce, the Department has agreed to seek the inclusion hereafter in treaties of the following provision:

> "Neither Party shall impose any measure of a discriminatory nature that hinders or prevents the importer or exporter of products of either country from obtaining marine insurance on such products in companies of either Party.".

For want of a better position, this provision may be added to Article XV, as new paragraph 3 thereof.

The purpose of this provision, of course, is to stem an evidently growing tendency for foreign countries to require that marine insurance, where the cargo is insurable by local importers or exporters, be placed in local companies, thus reducing the competitive freedom of the international insurance market and the business opportunities of American underwriters. Should the Japanese develop the position that they cannot accept this provision unless it is made subject to a balance-of-payments reservation, the Embassy is authorized to add the following sentence:

"The present

"The present paragraph is subject to the provisions of Article XII". It would be recognized, that is, that regulations imposed for the purpose of conserving dollars in dollar stringency situations are allowable, so long as there is a reasonable relation between the stringency and such regulations. The object of the provision is to prevent discrimination imposed for protectionist reasons.

ACHESON

EDT:CP:RWalker:mfl 7/10/52 | NA | OED cl'd with Mr. Robinson 7/8/52 | L/S cl'd with Mr. Metzger 7/8/52 | L/T | VD | Comm. L/EUR Mr. Kegan